

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ella Mintz	Team: Squad #12	CCRB Case #: 201903498	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 04/12/2019 3:50 PM	Location of Incident: 40th Precinct stationhouse	Precinct: 40	18 Mo. SOL 10/12/2020	EO SOL 5/29/2021	
Date/Time CV Reported Fri, 04/12/2019 7:30 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 04/24/2019 11:00 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Malik Underwood	19935	959321	040 PCT
2. POM Eduard Lucero	12992	960838	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Dawin Vanderpool	03324	955617	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Malik Underwood	Discourtesy: Police Officer Malik Underwood spoke discourteously to § 87(2)(b)	§ 87(2)(g)
B.POM Malik Underwood	Force: Police Officer Malik Underwood used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Eduard Lucero	Force: Police Officer Eduard Lucero used physical force against § 87(2)(b)	§ 87(2)(g)
D.POM Malik Underwood	Force: Police Officer Malik Underwood used a chokehold against § 87(2)(b)	§ 87(2)(g)
E.POM Eduard Lucero	Discourtesy: Police Officer Eduard Lucero spoke discourteously to § 87(2)(b)	§ 87(2)(g)
F.POM Eduard Lucero	Off. Language: Police Officer Eduard Lucero made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	§ 87(2)(g)

### Case Summary

On April 12, 2019, Sergeant Willie Briggs, of the 40<sup>th</sup> Precinct, called IAB and reported this incident. The case was received by the CCRB on April 24, 2019 under log #19-14969.

On April 12, 2019 at approximately 3:50PM, § 87(2)(b) was inside a cell at the 40<sup>th</sup> Precinct stationhouse when Police Officers Malik Underwood and Eduard Lucero, both assigned to the 40<sup>th</sup> Precinct, told him to exit the cell and go into a different cell. PO Underwood allegedly told § 87(2)(b) to “get the fuck out of the cell” (**Allegation A- Discourtesy:** § 87(2)(g)). PO Underwood and PO Lucero used physical force against § 87(2)(b) (**Allegations B and C- Force:** § 87(2)(g)). PO Underwood allegedly used a chokehold against § 87(2)(b) (**Allegation D- Force:** § 87(2)(g)). § 87(2)(b) was handcuffed and placed back in the cells and told PO Underwood and PO Lucero that he would fuck them up if he saw them in his neighborhood. PO Lucero allegedly responded to this by saying, “We just fucked you up, though, what are you gonna do about it?” (**Allegation E- Discourtesy:** § 87(2)(g)). PO Lucero allegedly called § 87(2)(b) a “pussy” (**Allegation F- Offensive Language:** § 87(2)(g)).

The investigation obtained stationhouse footage from the 40<sup>th</sup> Precinct stationhouse, which captures the entirety of the physical interaction between § 87(2)(b) and the officers (The original files can be found in Board Review 01, 02, 03. Subclips capturing the incident can be found in Board Reviews 04, 05, 06. A summary of the video is located at Board Review 07). Both PO Underwood and PO Lucero are equipped with body-worn cameras, and were wearing them on the day of the incident, but were not wearing them at the time of this interaction as they were doing administrative work in the stationhouse at the time of the incident.

### Findings and Recommendations

#### **Allegation A-Discourtesy: Police Officer Malik Underwood spoke discourteously to § 87(2)(b).**

In his statement to the CCRB, § 87(2)(b) stated that at approximately 10:00AM on April 12, 2019, he was arrested by Detective Mariusz Jasiurkowski, of the 40<sup>th</sup> Precinct detective squad (Board Review 08). Det. Jasiurkowski placed § 87(2)(b) inside one of the cells at the 40<sup>th</sup> Precinct stationhouse. At approximately 3:50PM, § 87(2)(b) was sleeping on the bench when he was awoken by PO Underwood screaming at him to “Get the fuck out of the cell.” § 87(2)(b) also mailed a complaint report to the CCRB on May 5, 2019, wherein he also made this allegation (Board Review 09).

The video footage obtained from the 40<sup>th</sup> Precinct stationhouse does not contain audio § 87(2)(g) (Board Review 07).

PO Underwood and PO Lucero both stated that when they initially escorted a female prisoner into the female cells, they noticed an individual on the bench with a hoodie over their face; the officers assumed this person was a female (Board Review 10, 11). PO Lucero went back to the cells, noticed that the individual was a male, and then went to retrieve PO Underwood so they could rectify the situation. PO Underwood and PO Lucero asked § 87(2)(b) multiple times to leave the cell and go to the female cell but he refused to do so. Both officers denied that PO Underwood said, “Get the fuck out of the cell” to § 87(2)(b) or used any profanity toward him.

A BADs search revealed the name of three males who could have conceivably have been in the cells at the time of this incident. The CCRB was unable to obtain statements from these individuals (Board Review 12). This BADs search did not reveal any females arrested in the 40<sup>th</sup> Precinct on that day. The prisoner holding pen roster was redacted by the NYPD and did not contain identifying information for the witnesses (Board Review 13).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation B-Force: Police Officer Malik Underwood used physical force against § 87(2)(b)**

**Allegation C-Force: Police Officer Eduard Lucero used physical force against § 87(2)(b)**

**Allegation D-Force: Police Officer Malik Underwood used a chokehold against § 87(2)(b)**

It is undisputed that § 87(2)(b) refused to go into the cells and physically resisted the officers' attempts to move him to another cell by grabbing onto the bars of the cell.

At 0:06 in the subclip of the video taken from the Cell 1 Camera at the 40<sup>th</sup> Precinct stationhouse (Original video located in Board Review 01, subclip located in Board Review 04, and video summary located in Board Review 07), PO Underwood opens the cell door and motions with his hand to § 87(2)(b) who is lying on the bench, to come outside. § 87(2)(b) does not move and appears to speak to PO Underwood. At 0:15 in the recording, PO Underwood enters the cell and places his hand on § 87(2)(b)'s back while appearing to motion with his other hand for § 87(2)(b) to move. § 87(2)(b) appears upset and does not move. PO Lucero and PO Underwood guide § 87(2)(b) out of the cell. At 0:39 in the recording, PO Underwood places § 87(2)(b) against the bars of the cells. At 0:49 in the recording, PO Underwood and PO Lucero grabbed § 87(2)(b)'s right hand and unsuccessfully try to pull it off the gate. At :52 in the recording, PO Underwood grabs § 87(2)(b)'s legs and appears to try and pull his legs while PO Lucero manages to pull § 87(2)(b)'s right hand off the cell. § 87(2)(b) continues to hold on to the gate with his left hand. At :59 in the recording, PO Lucero punches § 87(2)(b) once in the ribcage. PO Underwood grabs § 87(2)(b)'s arm and chest and pulls him down to the ground. PO Underwood never wraps his forearm around § 87(2)(b)'s neck. At 1:16 in the recording, other officers come into the cell area. It is unclear what the officers do on the ground.

At 1:48 in the subclip of the video taken from the Fingerprinting Camera at the 40<sup>th</sup> Precinct stationhouse, PO Lucero and PO Underwood lift § 87(2)(b) off of the ground (Original footage located in Board Review 02, subclip located in Board Review 05, and video summary is in Board Review 07). § 87(2)(b)'s left hand is not cuffed. The officers take § 87(2)(b) to the ground again by pushing his back against the ground, and handcuff him.

§ 87(2)(b), § 87(2)(g) § 87(2)(b) acknowledged tensing his body and refusing to let go of the gate. § 87(2)(b), § 87(2)(g) he stated that PO Underwood put him in a chokehold. When asked for details of this chokehold, § 87(2)(b) clarified that PO Underwood wrapped his forearm around his neck in and put pressure on his neck to pull him down to the ground. The action lasted for approximately two seconds. The chokehold did not restrict § 87(2)(b)'s breathing. § 87(2)(b) did not allege a chokehold in his complaint report.

§ 87(2)(g) Both officers denied that PO Underwood ever wrapped his forearm around § 87(2)(b)'s neck or placed him in a chokehold. PO Lucero stated that the reason he punched § 87(2)(b) in the ribcage was to gain compliance because § 87(2)(b) refused to let go of the gate. PO Lucero stated that this punch was ineffective in gaining compliance. PO Underwood stated that when the officers took § 87(2)(b) down to the ground for the second time, § 87(2)(b) resisted the officers by tensing his body.

PO Underwood and PO Lucero prepared TRI reports § 87(2)(g) (Board Review 14, 15).

Patrol Guide Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Use of force must be reasonable under the circumstances. In considering whether the use of force is reasonable, officers must take into consideration the actions taken by the subject, the duration of the action, and whether the subject is actively resisting custody (Board Review 16).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation E-Discourtesy: Police Officer Eduard Lucero spoke discourteously to** § 87(2)(b).

**Allegation F-Offensive Language: Police Officer Eduard Lucero made remarks to** § 87(2)(b).  
**based upon the gender of** § 87(2)(b).

§ 87(2)(b) alleged that once he was placed in the cell, all of the officers except for PO Lucero and PO Underwood left the room. § 87(2)(b) told the officers that he would “fuck them up” if he saw them in his neighborhood. PO Lucero said, “We just fucked you up though. What are you gonna do about it now? Haha.” PO Lucero called § 87(2)(b) a “pussy.”

At the 3:56 mark in the external timestamp of the Cell 2 camera at the 40<sup>th</sup> Precinct stationhouse (located in Board Review 03, summary located in Board Review 04), PO Underwood places § 87(2)(b) in the cells. § 87(2)(b) appears to be talking but none of the officers appear to move their mouths. At the 3:56 mark in the Fingerprinting camera, the officers all leave the cell area at the same time. None of the officers stay behind and speak to § 87(2)(b).

Both officers denied that they had a conversation with § 87(2)(b) after he was placed in the cell. The officers denied that PO Lucero said, “We just fucked you up, what are you gonna do about it now?” and denied that PO Lucero called § 87(2)(b) a “pussy.”

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[Redacted]

[Redacted]

[Redacted]

**Civilian and Officer CCRB Histories**

- § 87(2)(b) has been a party to one other CCRB complaint and has been named as a victim in one allegation.
  - § 87(2)(b)
- Police Officer Malik Underwood has been a member of service for four years and has been a subject in two CCRB complaints and four allegations, none of which have been substantiated. § 87(2)(g)
- Police Officer Eduard Lucero has been a member of service for three years and has been a subject in three closed CCRB complaints and four allegations, none of which have been substantiated. § 87(2)(g)

**Mediation, Criminal, and Civil Histories**

- This case was not suitable for mediation.
  - As of September 26, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim filed in regards to this incident (Board Review 17).
  - § 87(2)(b)
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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